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March 5, 2009

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: August 18, 2008

Case Number: TSO-0666

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization[1] (or "security clearance") under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should not be restored at this time.

I. Background

The individual is employed by a Department of Energy (DOE) contractor in a position that requires her to hold a security clearance. In March 2008, the local DOE security office (LSO) initiated a routine background investigation of the individual. The investigation revealed that the individual had experienced continued counseling with medication, severe bouts of depression, loss of memory, fatigue and problems controlling anger. The individual also disclosed that she had not filed her federal or state taxes since 2004. Exhibit (Ex.) 3; 23. In order to resolve questions and obtain additional information, the LSO conducted a Personnel Security Interview (PSI or Ex. 25) with the individual in April 2008. The PSI did not resolve the concern and the LSO referred the individual to a DOE Consultant-Psychiatrist (DOE Psychiatrist) for a psychiatric evaluation. The DOE Psychiatrist evaluated the individual in May 2008 and memorialized her findings in a report dated June 2008. (Psychiatric Report or Ex. 16). Based on her findings, the DOE Psychiatrist diagnosed the individual as suffering from Bipolar Disorder type II, most recent episode depressed. The DOE Psychiatrist concluded that this is an illness that causes, or may cause, a significant defect in the individual's judgment or reliability. *Id.* at 24.

[1] Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a).

On August 13, 2008, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created a substantial doubt regarding her eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (l) (hereinafter referred to as Criteria H and L respectively).[2]

Upon her receipt of the Notification Letter, the individual exercised her right under the Part 710 regulations by requesting an administrative review hearing. On September 8, 2008, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. I subsequently convened a hearing within the time prescribed in the regulations. At the hearing, four witnesses testified. The DOE Psychiatrist testified on behalf of the agency. The individual presented her own testimony and that of two witnesses. In addition to the testimonial evidence, the DOE submitted 28 exhibits into the record and the individual tendered eight exhibits. The transcript taken at the hearing shall be hereinafter cited as "Tr." Various documents that were submitted by the DOE Counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as "Ex." Documents submitted by the individual shall be cited as "Ind. Ex."

II. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites two criteria, Criteria H and L, as bases for suspending the individual's security clearance. With regard to Criterion H, the LSO cites the diagnosis of the DOE Psychiatrist that the individual meets the criteria for Bipolar Disorder type II, most recent episode depressed and relies on the following information: (1) as recently as March 2008, the individual experienced an outburst of anger at the workplace resulting in her relocation to another building and department; (2) as recently as December 2007, the individual has experienced periods of depression; and (3) in her April 2008 PSI, the individual admitted that due to a period of depression that began in 2003, she had failed to file her federal and state income taxes for the tax years 2004 through 2007. Ex. 1 at 1. As for Criterion L, the LSO cites several facts, among which are the following: (1) in her April 2008 PSI, the individual admitted that she has failed to file her federal and state taxes for the years 2004 through 2007 and (2) despite failing to file her federal and state taxes for the years 2004 through 2007, the individual has continued to take weekly gambling trips since 2006 and yearly gambling trips since 2003. *Id.* at 1-2.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's mental health under Criteria H and her unusual behavior under Criterion L. The security concerns associated with Criteria H and L are as follows. As for Criterion H, a mental

[2] Criterion H relates to information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychologist or licensed clinical psychiatrist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Criterion L relates to information that a person "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility." 10 C.F.R. § 710.8(l).

illness such as Bipolar Disorder type II can cause a significant defect in a person's psychological, social and occupational functioning which, in turn, can raise concerns from a security standpoint about possible defects in a person's judgment, reliability, or stability. *See* Guideline I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House *(Revised Adjudicative Guidelines).* Criterion L relates to information indicating that the individual engaged in unusual conduct which shows that the individual is not honest, reliable or trustworthy. *See id.*, Guideline E.

III. Findings of Fact

The individual has held a clearance since 1987. Ex. 3 at 3. Before granting the security clearance, the DOE mitigated issues regarding the individual's mental and emotional health. *Id.* Specifically, in December 1986, a DOE Psychiatrist (hereinafter "DOE Psychiatrist #1") evaluated the individual and diagnosed her as suffering from major depression, with a possible bipolar component to her illness. *Id.* DOE Psychiatrist #1 suspected a possible bipolar component to the individual's illness and concluded that she suffered from a major affective disorder with periods of mild hypomania. *Id.* DOE Psychiatrist #1 concluded at that time, however, that the individual's illness did not rise to the level of a significant defect in her judgment or reliability. *Id.*

During a routine background investigation in October 1989, security concerns surfaced when the individual's doctors provided discrepant information about her mental health. *Id.* Despite the discrepant information, the individual's clearance was continued because she successfully continued with her treatment and medication. *Id.*

In August 1992, the individual was hospitalized at a psychiatric hospital for treatment of depression where she received electroconvulsive therapy (ECT). *Id.*; Ex. 25 at 31. The individual admitted to having suicidal thoughts at the time. Ex. 3 at 3. The individual elected to have the ECT for immediate relief of the depression. After the ECT treatment, the individual was stabilized on antidepressive medication. *Id.* Based on the individual's medical records, the DOE continued her clearance but recommended another investigation in 12 months. *Id.*

The individual remained in a cleared status without incident until March 2003. *Id.* After a routine investigation where questions were raised regarding her mental and emotional health, a PSI was recommended to address the individual's continued counseling and to determine the need for long-term treatment. *Id.* In the April 2003 PSI, the individual discussed her continued counseling with a counselor and a psychiatrist, since 1995. *Id.* Because she continued counseling and the use of medication that was closely monitored, the individual remained in a cleared status. *Id.*

In March 2008, a routine investigation revealed continued counseling with medication, severe bouts of depression, loss of memory, fatigue, and problems controlling anger. *Id.* at 4. Along with her continued mental and emotional issues, the individual disclosed that she had not filed her federal or state taxes since 2004. *Id.* In addition, the individual reportedly cashed out $14,475.00 at a casino and received a cash advance of $13,000 at another casino. *Id.* A PSI was recommended to obtain further information. *Id.*

In a PSI conducted in April 2008, the individual discussed her history of counseling for depression. Ex. 25 at 21; 25. From 1995 until the present, the individual has had at least weekly counseling with her counselor and psychiatrist. *Id.* at 25-31. The individual has continued to take Celexa since her surgery for a brain tumor in 1990. *Id.* at 54. The individual went into a long period of depression when her mother passed away in 2003 and her father passed away in 2004. *Id.* at 15-16. During this period of depression, the individual reports that she functioned at work by wearing "a mask" to give the illusion that she was happy. *Id.* at 22-23. The individual is often late to work because of lack of sleep, which she attributes to a sleeping disorder. *Id.* at 40-42.

The individual further explained that she first began experiencing episodes of anger sometime between 1988 and 1990. Ex. 3 at 5; Tr. at 36-37. She has worked on the anger episodes in counseling, but experienced an episode in December 2007, when there was a dispute over whether human resources had received a form that the individual submitted. Ex. 25 at 61-62. It took the individual eight hours to locate the forms and in the process, she became very angry and sent the human resources department an email stating that they had an ineffective filing system. *Id.* at 61-62; Tr. at 89. In the latest episode that occurred in March 2008, the individual asked a colleague a question and other employees became involved and gave different answers. She became frustrated and reacted by telling her colleagues five times to get out of her office. Ex. 25 at 57. When they did not leave, the individual got up, left and stayed home for a week. *Id.*; Tr. at 90. Because of this episode, the individual was relocated at her workplace without any notice. Ex. 25 at 55. The individual has never received any reprimands due to her anger episodes but has been told not to do it again. Ex. 3 at 5.

Since her surgery in 1990, the individual has had problems with her short-term memory. *Id.* The individual stated that if she were given a list of words and asked to repeat them, she would remember only one word. *Id.* To function with her memory problems, the individual leaves notes for herself. *Id.* The individual confirmed that she had not filed her federal and state taxes since 2003 and attributes her failure to file her taxes to a long-time bout with depression. Ex. 25 at 17. During the 2007 investigation, the individual maintained that she would begin filing her taxes in December 2007. *Id.* at 18. In her April 2008 PSI, the individual revealed that she had not filed her taxes due to another state of depression. *Id.* at 17.

In May 2008, the individual was referred to a DOE Psychiatrist (hereinafter "DOE Psychiatrist #2") to determine if the depression caused the individual to have a significant defect in her judgment and reliability. Ex. 16 at 1. During her psychiatric evaluation, the individual continued to state that she has not filed her taxes due to bereavement and depression. *Id.* at 15. DOE Psychiatrist #2 opined that if her failure to file taxes is due to the depression, then her illness is significant enough to impair her judgment and reliability. *Id.* at 24.

IV. Regulatory Standard and the Individual's Burden

The applicable regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). There is a strong presumption against the granting or restoring of a security clearance. *See*

Department of Navy v. Egan, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting him an access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

V. Hearing Testimony

A. The Individual

The individual testified that during her previous interviews and psychiatric evaluation, she had forgotten that her tax payments are automatically withdrawn from her paycheck. Tr. at 158. She stated that she has received a refund for 2003 and, based on discussions with her accountant, she is going to receive a refund for 2004. *Id.* at 159. At the hearing, the individual explained that she had given her accountant the paperwork needed to file her 2005 taxes and had intended to give him the paperwork for her 2006 taxes the day before the hearing but could not do so because "her dog was ill and threw up all over the house." *Id.* The individual stated that instead of mailing her tax information to her accountant, she spent the day cleaning her carpets. *Id.* She stated that once she files her 2006 taxes, only 2007 will remain. *Id.* The individual testified that the reason she failed to file her federal and state taxes from 2004 through 2007 is because "all I could see was my parents dead in bed." *Id.* The individual explained that she was the one who discovered her parents' bodies at home and that each year following their deaths, she cannot file her taxes because she becomes "powerless" and "overwhelmed" during tax time. *Id.*; 169-172. She stated that the first time she failed to file her taxes was after her parents passed away and maintained that she does not owe the government money but is only delaying her refund by not filing. *Id.* at 160. The individual stated that she is unaware of the concern associated with her failure to file taxes but understands that it is against the law not to do so. *Id.* at 173.

The individual stated that when she doesn't get much sleep, she gets frustrated at work and "just blows up." *Id.* at 161. As an example, the individual explained that when she "blew up at the lady in HR" in 2007, she had already given her the information that was lost and it took her eight hours to re-do the information. *Id.* The individual felt like it was a waste of her time because she does not like re-doing her work. *Id.* The individual stated that she later realized that it was a "stupid thing to blow up over." *Id.* With regard to the anger episode that occurred in March 2008, the individual explained that she had a dispute with a colleague. *Id.* at 162. After about five minutes, the individual asked her colleague to please leave her office which was located in a conference room. *Id.* When the individual's colleague refused to leave the individual's office, a team lead for the

department appeared. *Id.* at 163. The individual then asked them both to leave her office and neither complied. *Id.* The individual stated that she then asked them both five more times to "please leave my office" and then stated "I'm going to blow." *Id.* The individual stated that when they would not leave, she picked up her purse and left, went to her car, burst into tears, drove to her psychiatrist's office and asked him to remove her from the drug study medication that she was currently taking. *Id.* The individual explained that during this time, she was a participant in an experimental drug study for Cymbalta, which she now "hates." *Id.* at 161. She stated that the first eight weeks of the study were "great" but after week ten, she knew "something was really wrong." *Id.* at 162-163. The individual stated that her psychiatrist advised her to stay home for two weeks and put her back on Celexa. *Id.* at 164. The individual explained that when she returned to work, she had been reassigned to another unit. *Id.* She felt that she did nothing wrong but that it was her fault although her colleagues did not leave her office as she had requested. *Id.*

The individual believed that she is currently better than she was in the 1990s. *Id.* at 165-166. She stated that when she had depressive episodes, she could not remember how to perform basic functions, such as showering. *Id.* at 166. When that occurred, she stated that she had to "work it through" until she finally remembered what to do. *Id.* Currently, the only way she can tell that she is in a depression is when she goes deaf in both ears. *Id.*; Ex. 25 at 21-22. She stated that she now works hard to deal with her problems. Tr. at 166-167. She has weekly visits with her counselor where she learns how to help herself and deal with her anger and workplace issues when they arise. *Id.* at 165.

The individual stated that she has no problems paying her bills. *Id.* at 167. She stated that she has set up some of her bills to be automatically withdrawn from her account and has also signed up for on-line bill pay. *Id.* She stated that she does get money from an investment account which is managed by her brother, but that she manages all of her own accounts. *Id.* She stated that she does not know how much she has inherited from her parents' estate because her brother is not finished with the administration of the estate. *Id.* The individual stated that she is the sole owner of her parents' house and remaining art work. *Id.* at 167-168. The individual stated that she has over $300,000 available to her from her parents' estate for gambling. *Id.* at 177. She stated that she has no idea of how much money she's gambled because "it's not important to her." *Id.* She testified that she usually takes $2,000 a week to gamble and if she wins, she uses her winnings to gamble the next week. *Id.* She stated that she doesn't withdraw money from her account each week and she's considered withdrawing less money for gambling because of the "recession." *Id.* at 177-178. She stated that while she does not intend to exhaust the remaining funds in her account, she likes to gamble with her friend because they "have dinner" and "sit at the machine and talk." *Id.* at 178-179.

B. The Individual's Psychiatrist

The individual's psychiatrist testified that he first encountered the individual sixteen years ago when she was referred to him for a consultation in the middle of her ECT treatment. *Id.* at 120. The individual's psychiatrist stated that he has regularly treated the individual since 1997. *Id.* The individual's psychiatrist stated that the individual has a background of having had recurrent major depression. *Id.* at 122-123. He testified that the individual's current medical problems include a past brain tumor, subsequent stroke, epilepsy, insulin resistance (which is similar to diabetes), gastro-esophageal reflux, hypertension, immune dysfunction and asthma. *Id.* at 123. The individual

also had issues with mood which is attributable to her sleep apnea. *Id.* He explained that these are all functions that influence her psychological functioning and that in her treatment, he had to assess how much contribution there is to her mental state with all of her physical problems. *Id.*

The individual's psychiatrist stated that he has currently diagnosed the individual with a Mental Disorder due to Physical Disorder.[3] *Id.* at 122. He explained that this diagnosis means that there is some kind of mental problem, i.e. depression, anxiety or personality change, as the first criterion. *Id.* at 134. Next, there must be a physiologic reason why the person is having those symptoms and that another mental disorder doesn't better fit that causation. *Id.* at 134-135. The individual's psychiatrist concluded that "there are a lot of factors as to why the individual has not gotten better" and that "many of her problems are very complicated." *Id.* at 136.

The individual's psychiatrist is aware of the individual's anger episodes at work. *Id.* at 128; 132-134. The individual's psychiatrist testified that the individual has emotional lability, which means that her mood can change very quickly, but she doesn't have sustained elevation in mood or expansiveness or irritability. *Id.* at 124. Given all of her medical problems, her situation in terms of a mental disorder, is influenced by her physical problems, fatigue, lack of oxygen to the brain, which are very difficult to distinguish from depression. *Id.* The individual's psychiatrist testified that he prescribed medication to address all of the individual's issues, including anticonvulsants that addressed not only her moods but also her epilepsy that resulted from the stroke and surgery. *Id.* at 126.

The individual's psychiatrist believed that DOE Psychiatrist #2 "took a photograph of [the individual's life] and did a very good job of looking at it" but from the long-term perspective, the individual is much better now. *Id.* at 137. He opined that the individual's functioning, her workplace behavior, her temper, her depression and her coping mechanisms are all much improved. *Id.* He disagrees with DOE Psychiatrist #2's opinion that the individual's mental condition impairs her judgment or reliability. *Id.* He added, however, "it's not to say that she does not have bad days." *Id.* The individual's psychiatrist explained that the individual could have "the perfect storm." *Id.* at 138. For example, when she doesn't sleep, one of her immunologic things such as infection occurs. *Id.* He testified that when the individual has a bad day, she knows that she's having a bad day. *Id.* He also stated that "she has insight and knows when she is sick." *Id.* He stated that she has learned over time how to manage her problems and knows when she needs to "step away." *Id.*

The individual's psychiatrist testified that the cognitive problems that she has with memory are attributable to her epilepsy, brain tumor and sleep apnea, which are all insults on the brain. *Id.* He stated that she knows that she is not a very good historian and that she doesn't overstep her boundaries and do things that she should not do. *Id.* With regard to failing to file her taxes, the individual's psychiatrist does not believe the individual to be lazy or impaired, but "tired." *Id.* He stated that she has medical problems which cause her to be exhausted. *Id.*

[3] According to the DSM-IV-TR, Mental Disorder due to a General Medical Condition is characterized by the presence of mental symptoms that are judged to be the direct physiological consequence of a general medical condition. The term "general medical condition" refers to conditions that are coded on Axis III and that are listed outside the "Mental Disorders" chapter of the *International Classification of Diseases* (ICD) and in Appendix G of the DSM-IV-TR.

With regard to the individual's current treatment plan, the individual's psychiatrist noted that the individual's medications are pretty good but that she needs to have better medical management of her sleeping problems. *Id.* at 148-149. The individual's psychiatrist acknowledged that the individual's current medical condition could be "a little better" and concluded that the vulnerability for anger outbursts and "untoward kind of behavior that lend to emotional experiences" continues. *Id.* at 153-154. He recommends that the individual continue with psychotherapy to address the things that impinge on her quality of life. *Id.* at 152.

C. The Individual's Counselor

The individual's counselor[4] is a Licensed Professional Clinical Counselor and Doctor[5] of Oriental Medicine[6] who first had contact with the individual thirteen years ago. *Id.* at 194. The individual's counselor has treated the individual from that time to the present. *Id.* In the earlier years, she and the individual focused on treatment for various issues such as posttraumatic stress disorder, an eating disorder and childhood sexual abuse issues. *Id.* at 194-195. The individual's counselor testified that following the individual's brain tumor, she and the individual worked a lot with anger management and compulsive issues. *Id.* at 195.

The individual's counselor believes the individual to be much healthier today than she was in the past. *Id.* at 199-200. The individual's counselor stated that the individual has been able to normalize her interaction with people which has been a "big growth" for her health. *Id.* at 200. The individual's counselor has worked with the individual by giving her skills to help her deal with interpersonal problems and conflicts, such as those arising in the workplace as well as identifying the sort of things that "triggered" her anger. *Id.* at 195-200. The individual's counselor stated that the individual would sometimes have an immediate reaction to something, causing her to go from calm to very angry, even explosive, but only from the perspective of yelling, throwing her hands in the air or maybe walking out of the room. *Id.* at 196. The individual's counselor did not believe, however, that the individual would ever physically harm someone in the midst of her anger. *Id.*

The individual's counselor testified that she currently meets with the individual weekly. *Id.* at 200. She described herself as a supportive person to the individual who guides her on issues such as how to work with people and how to work things out when she is triggered. *Id.* The individual's

[4] The individual's counselor has earned a Master of Arts in Counseling, Master of Business Administration and a Master of Science in Oriental Medicine. She also has a private practice specializing in psychotherapy, consultation and Oriental Medicine where she takes an integrative approach to address relationship issues, parenting skills, personal growth, fertility issues, pain, psycho-emotional trauma, communication, grief work and conflict mediation. *See* Ind. Ex. C.

[5] According to the counselor's educational credentials, she is not a medical doctor and does not hold a Doctorate in Oriental Medicine. *See* Ind. Ex. C. She refers to herself as a Doctor of Oriental Medicine. For purposes of this decision, it is not relevant whether the counselor holds a Master's Degree or a Doctorate in Oriental Medicine.

[6] According to the individual's counselor, Oriental Medicine involves the practice of blood and chi, yen and yang and phlegm and dam and the practice of Shen which involves looking at a person to determine how you can put that person in balance. Tr. at 205. Herbs, counseling and acupuncture are also utilized with the various modalities that are a part of Oriental Medicine. Tr. at 205. Although the individual's counselor testified that she utilized her training in Oriental Medicine to treat the individual, the focus of her testimony related to her treatment of the individual in her capacity as a Licensed Professional Clinical Counselor.

counselor does not believe the individual's treatment should end in the near future because a number of issues remain that the individual is working on, such as impulse control, eating and relationship issues. *Id.* at 200-201.

D. DOE Psychiatrist #2

DOE Psychiatrist #2 testified that the individual's case is a "very complicated one" primarily because there is a long history of mental health treatment that needed review and because the individual recognized her memory difficulties and in her own words, "did not consider herself a reliable historian." *Id.* at 29-30. DOE Psychiatrist #2 testified that in addition to the information gathered during the individual's psychiatric evaluation, she had reviewed voluminous records contained in the individual's personnel file along with a three-page summary letter from the individual's therapist prior to making her diagnosis. *Id.* at 28-29; Ex. 17. DOE Psychiatrist #2 recalled that the individual had actually described being depressed all of her life. Tr. at 31. DOE Psychiatrist #2 noted that in the individual's earlier treatment, DOE Psychiatrist #1 reported that the individual had a good response to treatment and gave her a favorable prognosis. *Id.* at 32. Also, during his early evaluation of the individual, another treating psychiatrist had actually considered in his differential diagnosis a diagnosis of Bipolar Disorder type II, which by definition is a mood disorder that is characterized by recurrent major depressive episodes and then in between those episodes, the individual would manifest hypomanic, not manic, episodes.[7] *Id.* at 32-33. DOE Psychiatrist #2 found it significant that one of the individual's own treating psychiatrist had considered Bipolar Disorder type II in treating the individual. *Id.* at 33.

DOE Psychiatrist #2 opined that the individual suffered a major depressive episode in 1983 or 1984. *Id.* at 36. She stated that in later years, the individual's gambling and major dieting gave a hypomanic component to whatever mood disorder the individual had at that time. *Id.* at 37-38. DOE Psychiatrist #2 explained that the individual's gambling and generosity was a "great time for her." *Id.* at 38. Unfortunately, in following years, the individual crashed and again complained of depression. *Id.* at 38.

DOE Psychiatrist #2 testified that she does not doubt the individual's compliance with her treatment plan but noted, however, that despite her seemingly aggressive treatment, the individual's problems have continued. *Id.* at 57-58. DOE Psychiatrist #2 stated that this is an indication that the individual currently has a more severe type of depression compared to other times in her life and that her body is different, she has different medical problems and is taking a lot of medication. *Id.* at 58. Adding the significant losses in her life and combination of stressors and changing medical problems in her

[7] DOE Psychiatrist #2 explained that according to the DSM-IV-TR, the difference between the manic mood and hypomanic mood is the degree of the severity of the symptoms and the duration of those symptoms. A manic mood is not just simply an elated mood, but it could be agitation, increased irritability or expansive mood. A manic mood will be expressed or observed and then it is associated with some other symptoms, such as someone having very little need for sleep, increased psychomotor activity, racing thoughts or similar symptoms. DOE Psychiatrist #2 also explained that in her clinical practice, she usually sees hypomania as a very egosyntonic mood, which is a medical term that clinicians use to describe when an individual likes to be in a particular state. By definition, hypomania is not severe enough to cause marked impairment of the individual's functioning and it's very understandable as to why an individual would not see themselves as "disturbed." Tr. at 33-34.

body, DOE Psychiatrist #2 also noted that these may be possible reasons why the individual's symptoms may be worsening. *Id.*

In her subsequent testimony, DOE Psychiatrist #2 stated that the mood disorder diagnosis that she gave the individual cannot be invalidated by her current diagnosis. *Id.* at 210. She testified, however, that both diagnoses can be coexistent and agrees with the individual's psychiatrist that the sleep apnea, restless leg syndrome and seizure disorder all impact brain functions and are closely tied. *Id.* at 211. DOE Psychiatrist #2 testified that the individual does have a mental disorder that is quite complicated by other physical disorders. *Id.* DOE Psychiatrist #2 noted that both of the individual's treating professionals did not deny that although the individual is much better now, she will be a long-term work for them. *Id.* at 211-212. DOE Psychiatrist #2 agreed that the individual's vulnerability exists and is increased because of her numerous physiological, physical and chemical imbalances. *Id.* at 212. She stated that this will give her less strength and ability than a person who does not have those illnesses. *Id.*

DOE Psychiatrist #2 reiterated her opinion that if the individual's failure to file her taxes is due to depression, then her illness is significant enough to impair her judgment and reliability. *Id.* at 111-112; Ex.16 at 24. Second, if her failure to file is simply because she "just got lazy," then she poses a more significant concern, as that implies to a willful disregard to the law. *Id.* at 111-113; Ex. 16 at 24. DOE Psychiatrist #2 opined that a willful disregard of the law creates a significant concern with regard to an individual's judgment or reliability and is actually, at a minimum, "poor judgment." Tr. at 113.

E. The Individual's Additional Documentary Evidence

In addition to the information referred to above, the individual presented documentation in the form of an undated handwritten note from her current supervisor indicating that she was "doing very well here" and to keep up the "good work." Ind. Ex. D. The note was affixed to a memorandum to the individual from her supervisor concerning the incidents involving the individual's outbursts that occurred at the workplace in 2008. *Id.* The letter also addresses the fact that the individual indicated that a change in medication may have contributed to her behavior and that supervisor remained concerned because the individual admitted that she did not know when she may have another outburst. *Id.*

VI. Analysis

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors.

After due deliberation, it is my opinion that the individual's access authorization should not be restored at this time because I cannot conclude that restoring the access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

A. Criterion H

I find that the individual has not mitigated the security concerns with respect to her psychiatric diagnosis under Criterion H. Although DOE Psychiatrist #2 and the individual's psychiatrist differ in their medical diagnoses,[8] they both agree that the individual currently suffers from a mental condition that is complicated by several physical disorders and that under her current treatment plan, she remains vulnerable to outbursts and behaviors that lend themselves to emotional experiences. In the administrative review process, it is the Hearing Officer who has the responsibility for forming an opinion as to whether an individual with a diagnosed mental condition has mitigated the security concerns arising from the diagnosis. See 10 C.F.R. § 710.27. The DOE does not have a set policy on what constitutes mitigation of concerns related to mental conditions, but instead makes a case-by-case determination based on the available evidence. In many instances, Hearing Officers give deference to expert opinions of psychiatrists and other mental health professionals regarding the mitigation of concerns related to mental health conditions. *See Personnel Security Hearing,* Case No. TSO-0634 (2008); *Personnel Security Hearing,* Case No. TSO-0618 (2008).[9] Based on my review of the evidence and testimony, I agree with the opinion of both medical professionals that the individual currently suffers from a mental disorder that has been complicated by multiple physical problems. I further find based on the evidence that her mental condition may raise a significant defect in her judgment and reliability.

Based on the individual's testimony and her demeanor at the hearing, I remain unconvinced that the individual has regained control of her impulses which is directly relevant to being in control of her behavior, thinking and judgment. In spite of the fact that the individual has a willingness to continue with the appropriate treatment and medication, all of the medical professionals agree that the individual remains vulnerable to future anger episodes. I noted that the individual has shown a history of cooperation with medical professionals in treating her disorder and compliance with regard to taking the prescribed medication and agree that it is a positive sign that the individual continues to remain under the care of professionals. However, it is significant, in my view, that the individual's psychiatrist believed that the individual's current treatment plan needs to be "tweaked" and that the individual needs better medical management of her sleeping problems. Further, DOE

[8] The DOE Psychiatrist #2 diagnosed the individual as suffering from Bipolar Disorder type II, most recent episode depressed and the individual's psychiatrist diagnosed the individual with a Mental Disorder due to General Medical Condition. While the criteria of the DSM-IV-TR would support a finding of either diagnosis and because the two diagnoses can co-exist, the difference in the diagnoses is not material to my decision regarding whether the individual has resolved the security concerns related to diagnosis of Bipolar Disorder type II, most recent episode depressed.

[9] Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at http://www.oha.doe.gov. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at http://www.oha.doe.gov/search.htm.

Psychiatrist #2 opined that due to numerous physiological, physical and chemical imbalances, the individual's vulnerability has increased, giving her less strength and ability than a person without those illnesses has to cope. These are all indications that the individual's mental and emotional health could be better than it currently is. Considering all of the evidence in this case, I find that the individual's current mental condition poses an unacceptable risk to national security. *See Personnel Security Hearing*, Case No. TSO-0031 (2003); *Personnel Security Hearing*, Case No. VSO-0358 (2000). I find therefore that the individual has not mitigated the Criterion H concerns before me.

B. Criterion L

The individual's only explanations for her failure to file taxes are that her dog vomited on the carpet and her medical conditions caused her to be fatigued. Neither of these excuses mitigate the underlying security concerns before me regarding the individual's failure to file taxes. For these reasons, I find that the individual has not mitigated this concern under Criterion L.[10]

I find, however, that the individual has mitigated the security concern with respect to her gambling. The individual has not been diagnosed with pathological gambling. She maintains control of her own accounts and has not depleted the discretionary income from her parents' estate. The individual continues to work and pay her bills. The individual owns her home and has not suffered any negative consequences as a result of her gambling. Further, the record in this matter is devoid of any information indicating that the individual's gambling losses have caused financial pressures that could lead her to commit crimes such as espionage. *See Personnel Security Hearing*, Case No. TSO-0663 (2009). Based on the foregoing, I find that the individual has presented sufficient information that mitigates the security concern regarding her gambling under Criterion L.

VII. Conclusion

Based on the factors discussed above, I find that the individual has successfully addressed the DOE's security concerns under Criterion L with regard to her gambling. However, she has failed to mitigate the Criterion H concerns associated with her mental condition or Criterion L concerns associated with her failure to file taxes. The individual has therefore failed to demonstrate that restoring her access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored at this time. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Avery R. Webster
Hearing Officer
Office of Hearings and Appeals

[10] The individual also maintained that her failure to file taxes was due to her severe depression resulting from her parents' deaths. Although she understands that failing to file her federal and state taxes is against the law, she asserted that she cannot do so because she becomes "powerless" and "overwhelmed" at tax time. Based on these factors, I find that her inability to file taxes for the years 2004 through 2007 also demonstrates that her illness is significant enough to impair her judgment and reliability under Criterion H.

Date: March 5, 2009